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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0182**

State of Minnesota,
Respondent,

vs.

Adam Frederick King,
Appellant.

**Filed February 6, 2023
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-19-8538

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Ramsey County jury found Adam Frederick King guilty of second-degree criminal sexual conduct based on evidence that he engaged in multiple acts of sexual contact with his daughter over an extended period of time. We conclude that the district

court did not err by admitting expert testimony on the subject of delayed and incremental reporting by adolescent victims of sexual abuse. Therefore, we affirm.

FACTS

In October 2018, King’s then-17-year-old daughter, A.M., contacted the St. Paul Police Department to report that King had engaged in sexually inappropriate behavior toward her on a weekly basis for approximately four years, until she moved out of his home in June of that year. A police officer referred her to the Midwest Children’s Resource Center, a child-abuse specialty clinic at Children’s Hospital, where a nurse, Beth Carter, conducted a forensic interview of A.M.

More than one year later, in November 2019, the state charged King with one count of second-degree criminal sexual conduct for engaging in multiple acts of sexual contact over an extended period of time with a person under 16 years of age with whom he had a significant relationship, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2014).

In April 2021, the state gave notice of its intent to call Carter as an expert witness. The notice stated that Carter would give testimony “explaining child sexual abuse disclosure, including dynamics of delayed reporting and disclosing in stages, along with the regularity of a lack of physical findings of abuse.” As trial drew near, the state filed a letter brief in which it presented argument as to why Carter’s expert testimony should be admitted into evidence.

The case was tried to a jury on five days in August and September 2021. During *voir dire* of the venire panel, the prosecutor asked four prospective jurors for their “thoughts about delayed reporting if a child takes some time before they come forward to

report something.” Each of the four prospective jurors answered by stating, in various ways, that there may be legitimate reasons why such a person would delay in making such a report. Two of the four prospective jurors who answered the question were impaneled and served on the jury until the verdict.

A.M., who was 19 years old at the time of trial, was the state’s first witness. She testified as follows: When she was seven years old, she moved out of her mother’s home and began living with King, his wife, and their children. When she was approximately 13 years old, King began touching her inappropriately by “groping [her] breasts” and “grabbing [her] bottom.” King often forced her to sit or lie next to him in his bed, which allowed him to touch her stomach, breasts, back, and upper thighs, both over and under her clothing. When King groped her in that way, she often could feel his erect penis against her back. On one occasion when she was sitting on a couch, King used his foot to rub her “private part” between her legs for 10 to 15 minutes. More than once King told A.M. that he would date her if she were not his daughter. The inappropriate touching happened frequently, typically twice each week, for a period of three to four years.

When King’s sexual abuse of A.M. began, the family lived in various rental properties in the St. Paul area. In early 2018, the family relocated to Florida, where King’s brother lived with his family. King’s family moved to Alabama approximately six months later, when A.M. was 16 years old. A.M. first disclosed King’s sexual abuse to her stepmother and to King’s brother while she was living in Alabama. She then lived with King’s brother’s family in Florida for several months until she moved back to Minnesota to live with her mother.

A.M. also testified about why she did not report King's sexual abuse earlier than she did. She testified that it took her a while to realize that King's behavior was wrong. She testified that the family shared the belief that "what happens in our house stays in our house." She testified that she saw an opportunity to tell someone about it when she felt that her stepmother would do something about it. She testified that, even after she disclosed the abuse to her stepmother, she did not contact law enforcement because she was concerned about the possible effect on her siblings. She also testified that she reported it when she did because she had moved back to St. Paul, where much of the sexual abuse had occurred.

The state then called King's brother and King's brother's daughter (*i.e.*, A.M.'s cousin), who corroborated A.M.'s testimony in various ways. The state also called the police sergeant who first received the report from A.M. And the state called A.M.'s mother, who testified about A.M.'s disclosure to her and her move back to Minnesota.

The state's final witness was Carter. Before she testified, the prosecutor and King's attorney presented oral arguments to the district court concerning the admissibility of her proposed expert testimony regarding delayed and incremental reporting by adolescent victims of sexual abuse. The district court ruled that the expert testimony would be admissible on the ground that it would be helpful to the jury.

Carter initially testified about her educational background, her work experience, her current employment, and forensic interviews in general. She testified that she conducted a forensic interview of A.M. in October 2018. The state played a video-recording of the interview for the jury.

The district court then qualified Carter as an expert witness. Carter testified that, in her expert opinion, adolescents often delay reporting sexual abuse because they are “afraid of what might happen if they do report” and are concerned about the potential consequences for their families. She testified that adolescents often are afraid “that somebody might not believe them,” that “they might get in trouble,” or that “they might hurt feelings because of it.” She testified further that adolescents may disclose instances of abuse incrementally because they are afraid to talk about it or because they are assessing whether a listener will believe them. Carter did not offer any opinion as to whether A.M. was truthful or whether King actually engaged in the conduct described by A.M.

During the defense case, King testified by denying the allegations. In closing arguments, the attorneys focused on A.M.’s credibility. The prosecutor argued that this case is about “judging the credibility of witnesses.” King’s attorney agreed, stating, “As the State has said, this comes down to the credibility of” A.M.

The jury found King guilty. The district court imposed a sentence of 90 months of imprisonment. King appeals.

DECISION

King argues that the district court erred by admitting Carter’s expert testimony concerning delayed and incremental reporting by adolescent victims of sexual abuse. Specifically, King contends that the district court erred by ruling that Carter’s expert testimony would be helpful to the jury.

The admissibility of expert testimony is governed by rule 702 of the rules of evidence. The first sentence of the rule provides, “If scientific, technical, or other

specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Minn. R. Evid. 702. “Expert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury’s ability to reach conclusions.” *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quotations omitted). We apply an abuse-of-discretion standard of review to a district court’s determination that expert testimony will be helpful to a jury and to the district court’s decision to admit the expert testimony into evidence. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016).

A.

The supreme court has issued a series of opinions concerning the type of expert testimony at issue in this appeal.

In *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982), the appellant was convicted of engaging in first-degree criminal sexual conduct toward an adult. *Id.* at 229. On appeal, the supreme court considered whether the district court erred by admitting expert testimony concerning “typical post-rape symptoms and behavior of rape victims,” which the court characterized as evidence of “rape trauma syndrome.” *Id.* In interpreting rule 702, the court stated, “If the jury is in as good a position to reach a decision as the expert, expert testimony would be of little assistance to the jury and should not be admitted.” *Id.* The court reasoned that the evidence was not helpful to the jury because “[t]he factual question to be decided by the jury is whether the alleged criminal conduct occurred,” not whether

the complainant “react[ed] in a typical manner to the incident” or “display[ed] the typical post-rape symptoms and behavior of rape victims.” *Id.*

Two years later, in *State v. Myers*, 359 N.W.2d 604 (Minn. 1984), the supreme court considered an appeal in which the appellant was convicted of engaging in second-degree criminal sexual conduct toward a child who was six or seven years old. *Id.* at 606-07. At trial, a clinical psychologist gave expert testimony concerning “characteristics or traits typically observed in sexually abused children.” *Id.* at 608. The expert witness testified that a sexually abused child often is “afraid to tell of the abuse because she fears she will be blamed or punished,” “fears the possible breakup of the family,” “fears she won’t be believed,” or is confused about whether the sexual abuse is right or wrong. *Id.* at 608-09. The expert witness also testified about which of these common characteristics she observed in the complainant. *Id.* at 609. The supreme court reasoned that, in most cases, “the credibility of a witness is peculiarly within the competence of the jury, whose common experience affords sufficient basis for the assessment of credibility.” *Id.* at 609-10. But the court found that a different approach was warranted in that case, for the following reasons:

The nature . . . of the sexual abuse of children places lay jurors at a disadvantage. Incest is prohibited in all or almost all cultures, and the common experience of the jury may represent a less than adequate foundation for assessing the credibility of a young child who complains of sexual abuse. If the victim of a burglary failed to report the crime promptly, a jury would have good reason to doubt that person’s credibility. A young child subjected to sexual abuse, however, may for some time be either unaware or uncertain of the criminality of the abuser’s conduct. As [the expert witness] testified, uncertainty becomes confusion when an abuser who fulfills a caring-parenting role

in the child's life tells the child that what seems wrong to the child is, in fact, all right. Because of the child's confusion, shame, guilt, and fear, disclosure of the abuse is often long delayed. When the child does complain of sexual abuse, the mother's reaction frequently is disbelief, and she fails to report the allegations to the authorities. By explaining the emotional antecedents of the victim's conduct and the peculiar impact of the crime on other members of the family, an expert can assist the jury in evaluating the credibility of the complainant.

Id. at 610. The court noted its prior opinion in *Saldana* but stated that sexual abuse of a child is "one of those 'unusual cases' in which expert testimony concerning credibility of a witness should be received." *Id.* The court elaborated as follows:

In the case of a sexually abused child consent is irrelevant and jurors are often faced with determining the veracity of a young child who tells of a course of conduct carried on over an ill-defined time frame and who appears an uncertain or ambivalent accuser and who may even recant. Background data providing a relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children, and particularly of children as young as this complainant.

Id.

Three years later, in *State v. Hall*, 406 N.W.2d 503 (Minn. 1987), the supreme court considered an appeal in which the appellant was convicted of engaging in first-degree criminal sexual conduct toward a child who was 14 years old. *Id.* at 503. At trial, a clinical psychologist (the same clinical psychologist as in *Myers*) gave expert testimony concerning "characteristics commonly exhibited by sexually abused adolescents," one of which is "a delay in reporting," which often is due to "the victim's fear of being harmed." *Id.* at 504. The supreme court reviewed its prior opinions in *Saldana* and *Myers*, *id.* at 504-05, and

stated, “This case, in terms of the age of the complainant, falls between *Saldana* and *Myers*” because the complainant was a 14-year-old adolescent, “neither an adult as in *Saldana*, nor a child as in *Myers*.” *Id.* at 505. The court reiterated that “[t]he admissibility of expert testimony lies within the sound discretion of the trial court” and that “the basic consideration is whether it will be helpful to the jury.” *Id.* The court decided that the district court in that case “did not abuse its discretion by admitting the testimony . . . concerning the behavioral characteristics typically displayed by adolescent victims of sexual assault.” *Id.* The court concluded its discussion of the issue by stating:

While we hold that in cases where a sexual assault victim is an adolescent, expert testimony as to the reporting conduct of such victims and as to continued contact by the adolescent with the assailant is admissible in the proper exercise of discretion by the trial court, we caution that we do not intend to establish a categorical rule that expert testimony concerning all characteristics typically displayed by adolescent sexual assault victims is admissible.

Id.; see also *State v. Sandberg*, 406 N.W.2d 506, 511 (Minn. 1987) (applying *Hall* and affirming admission of similar expert testimony). This court twice has applied *Hall* in a precedential opinion, each time concluding that the district court did not abuse its discretion by admitting expert testimony concerning typical or common behavioral characteristics of adolescent victims of sexual abuse. See *State v. Reyes*, 890 N.W.2d 406, 411-13 (Minn. App. 2017); *State v. Davis*, 422 N.W.2d 296, 298-99 (Minn. App. 1988).

B.

In this case, the district court received lengthy arguments from counsel before making its ruling on the admissibility of Carter’s expert testimony. The prosecutor

informed the district court that Carter had evaluated more than 4,000 children since the early 1980s and has extensive training and experience regarding children who have experienced sexual abuse. The prosecutor summarized for the district court the concepts of delayed reporting and incremental reporting. The prosecutor urged the district court to consider that “everyday people don’t really understand why a child would delay reporting sexual abuse,” which is a factor previously identified by the supreme court. *See Myers*, 359 N.W.2d at 610. The prosecutor also noted evidence of “inconsistencies” in A.M.’s testimony that would allow King to challenge her credibility.

The district court also heard arguments from King’s attorney, who asserted that the prosecutor’s *voir dire* of prospective jurors revealed that expert testimony concerning the experiences of victims of sexual abuse is unnecessary. The district court inquired about the relevant caselaw, specifically caselaw involving adolescents, and the prosecutor referred the court to *Hall*. The district court also sought to ensure that Carter’s testimony was “a generalized description of delayed reporting or staged reporting,” not an expert opinion about what occurred in this case. At the conclusion of the lengthy colloquy, the district court specifically stated that the expert testimony would be helpful to the jury and, thus, admitted the evidence.

King contends that, contrary to the district court’s ruling, the expert testimony was not helpful to the jury. His primary contention is that the prosecutor’s *voir dire* of prospective jurors “demonstrated not only that they knew about the issue of delayed disclosure, but also that they were well-versed in various, common reasons why delayed disclosure occurs.” In response, the state contends that only four prospective jurors were

questioned about delayed or incremental reporting and that only two of the four actually served on the jury. That fact undermines King's primary contention with respect to ten of the twelve jurors who returned the guilty verdict. In addition, the *voir dire* responses of the two jurors are not a perfect match with Carter's expert testimony. One juror said that "people suppress stuff or aren't ready to talk about stuff when it happens to them." The other juror said that "people can be traumatized or shock them and they don't know what to do or how to respond." The transcript of *voir dire* suggests that even these two jurors might have found Carter's expert testimony to be helpful.

King also contends that the reasons why A.M. delayed reporting do not conform to the expert witness's testimony about typical or common behaviors of adolescent victims of sexual abuse. In response, the state identifies subjects on which A.M.'s testimony and Carter's testimony overlap. For example, A.M. testified that she initially did not realize that King's conduct toward her was abnormal, that family members believed that "what happens in our house stays in our house," and that she was concerned that making a disclosure would have an adverse effect on her siblings. These reasons are sufficiently similar to the general tendencies identified by Carter.

King contends further that A.M. did not actually engage in incremental reporting. In response, the state identifies four incidents or aspects of incidents that A.M. disclosed in stages. The state also asserts that King's attorney cross-examined A.M. about her incremental disclosures and mentioned them in closing argument. Indeed, King's attorney stated in closing argument that A.M.'s accusations had changed over time, that the state's evidence had "evolved," and that A.M. disclosed "for the first time ever" at trial that King

had once used his foot to rub her genital area. Again, the evidence of incremental reporting by A.M. is sufficiently similar to the general tendencies identified by Carter.

Thus, the district court did not abuse its discretion by determining that Carter's testimony might be helpful to the jury.

C.

King last argues that the district court erred by admitting the expert testimony on the ground that its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury. *See* Minn. R. Evid. 403.

The supreme court has cautioned that, in considering the admissibility of expert testimony about typical or common behaviors of sexual-abuse victims, district courts must "remain cognizant that even if expert testimony is helpful, its probative value must be balanced against the danger of unfair prejudice, confusion, or misleading the jury, and if its probative value is substantially outweighed by any of these considerations, it may be excluded." *Hall*, 406 N.W.2d at 505; *see also Myers*, 359 N.W.2d at 609; *Saldana*, 324 N.W.2d at 229. But King did not object to the state's expert evidence on the basis of rule 403. His attorney confined his arguments to whether the evidence would be helpful to the jury and, thus, whether the evidence satisfied the requirements of rule 702. Accordingly, the plain-error test applies. *See* Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

King contends that Carter's testimony was unfairly prejudicial to him on the ground that the expert testimony emphasized fear as a common reason for delayed reporting, even though A.M. did not testify that she was afraid. He also contends that the expert testimony

unduly diminished his ability to argue that A.M.'s inconsistent statements were reasons to question her credibility. King's first point does not establish that the district court plainly erred by not excluding the evidence pursuant to rule 403 because the expert testimony was appropriately focused primarily on other persons' general tendencies, not on either King's or A.M.'s conduct. King's second point does not establish plain error because it is in tension with the supreme court's caselaw concerning rule 702, which allows jurors to receive "relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility." *Myers*, 359 N.W.2d at 610.

Thus, the district court did not plainly err by not excluding the expert testimony pursuant to rule 403 on the ground that its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury.

In sum, the district court did not err by admitting expert testimony concerning delayed and incremental reporting by adolescent victims of sexual abuse.

Affirmed.